



precluded due to his failure to use a safety device, namely a seat belt, under K.S.A. 44-501(d)(1).<sup>3</sup>

Claimant maintains the ALJ's decision should be affirmed. Claimant argues that not only did he sustain a compensable physical injury on June 27, 2003 when he was involved in a motor vehicle accident that destroyed the vehicle, but as a result of the accident he has been diagnosed by one psychologist with post traumatic stress disorder and depression. It is this medical opinion which claimant offers in support of his request for ongoing medical treatment and upon which the ALJ relied in granting the request.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant was involved in a violent single vehicle crash on June 27, 2003, while in the course and scope of his employment for respondent. He admits he was not wearing a seat belt at the time of the accident and further testified he was not trained nor directed to wear the seat belt by his supervisor.<sup>4</sup> In contrast, Chris Butts, the President and owner of the respondent, testified that it was his company's policy that seat belts are to be worn at all times.<sup>5</sup>

Following the accident respondent provided medical treatment and temporary total disability benefits. Claimant was eventually returned to work but when he was driving the same sort of large truck he quickly began to experience stress and anxiety while driving, particularly at speeds over 50 m.p.h. Although respondent reassigned claimant to a local driving route, the truck involved in that route gave rise to complaints of pain in claimant's neck area. Another job was offered but claimant turned that job down as his personal physician recommended against the job.

Thereafter in August 2003, claimant was seen by Dr. E. Robert Sinnett who performed a series of diagnostic tests and recommended he have some counseling to

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<sup>3</sup> Although not expressly stated within the ALJ's Order, it is clear from the transcript that the ALJ considered and rejected respondent's affirmative defense based upon K.S.A. 44-501(d)(1). The ALJ concluded that statute did not apply as the applicable case law requires "a willful element, almost a willful intent to injury [sic]. (P.H. Trans. at 50). He further found an insufficiency of evidence as to the link between claimant's admitted failure to wear his seat belt and the injuries he sustained from the work-related injury. Thus, he concluded respondent had failed to satisfy its burden on that issue, at least as of the preliminary hearing.

<sup>4</sup> P.H. Trans. at 39-40.

<sup>5</sup> Id. at 34-36.

address his post traumatic stress disorder (PTSD) and depression. Dr. Sinnett indicates claimant's diagnosis is attributable to his "near death experience" on June 27, 2003.<sup>6</sup>

Respondent referred claimant to Dr. T. A. Moeller who was highly critical of Dr. Sinnett's evaluation. Dr. Moeller further indicated claimant does not have PTSD but merely has an adjustment disorder with anxious mood which is resolving on its own.<sup>7</sup>

In ruling on the claimant's preliminary hearing request, the ALJ stated as follows:

Respondent has refused to provide psychological or psychiatric treatment on the theory that [c]laimant's current diagnoses are related to his accident, but not his injuries. The Court views this as a distinction without a difference. Claimant's need for treatment, if any, is directly attributable to the accident that produced his physical injuries. Had [c]laimant not suffered physical injuries in the accident, [r]espondent's argument would have reflected the prevailing law in this State, that psychological injury would not have been compensable. Where, as here, the accident provoked both physical and psychological injuries, both are compensable causes of injuries.<sup>8</sup>

The Board finds the ALJ's analysis to be accurate. Claimant's need for medical treatment stems from his work-related accident. He is, therefore, entitled to the medical treatment ordered by the ALJ.

As for the respondent's affirmative defense based upon K.S.A. 44-501(d)(1), the Board finds no reason to disturb the ALJ's conclusion. The evidence is unpersuasive and contradicted as to whether a seat belt would have limited claimant's physical injury or altered claimant's physical outcome. Further, there is insufficient evidence as to claimant's willful failure to use the safety device. While he admittedly failed to use the seat belt, he had not been trained nor counseled about the company's policy to use the seat belts. Accordingly, the ALJ's Order will not be disturbed.

As provided by the Workers Compensation Act, preliminary hearing findings are not final, but subject to modification upon a full hearing on the claim.<sup>9</sup>

**WHEREFORE**, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bruce Moore, is affirmed

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<sup>6</sup> Id., Cl. Ex. 1 at 3.

<sup>7</sup> Id., Resp. Ex. A, Moeller's Report at 8-9.

<sup>8</sup> ALJ Order (Apr. 12, 2004).

<sup>9</sup> K.S.A. 44-534a(a)(2).

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June, 2004,

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BOARD MEMBER

- c: Rodney G. Nitz, Attorney for Claimant  
Jon E. Newman, Attorney for Respondent and its Insurance Carrier  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director